

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LYNELL DENHAM,

Plaintiff,

v.

LEONARD CARVER III, et al,

Defendant.

CASE NO. C14-5201 RBL

ORDER DENYING IFP  
APPLICATION

[DKT. #1]

Before the Court is Plaintiff Lynell Denham's application to proceed *in forma pauperis*.  
[Dkt #1] For the reasons set forth below, the Court denies the application and the motion.

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should "deny leave to proceed *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit." *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is frivolous if "it ha[s] no arguable substance in law or fact." *Id.* (citing *Rizzo v.*

1 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.  
2 1984).

3 The Court will not grant *in forma pauperis* when it is concerned that a lawsuit is  
4 frivolous. Denham alleges a conspiracy between members of the FBI, Pierce and King County  
5 Sherriff's Offices, Pierce County Prosecutor's Office, United States Attorney's Office, and  
6 Tacoma, Lacey, and Bellevue Police Departments to arrest him for a series of bank robberies.  
7 Denham brings abuse of process, false imprisonment, false arrest, malicious prosecution,  
8 misrepresentation, judicial deception, outrage, slander, and libel claims. He alleges that the  
9 Defendants unlawfully arrested him and conspired with each other to misrepresent to the court  
10 that their suspect matched Denham. He seeks 385 million dollars in damages. The Court is  
11 concerned Denham's Complaint is frivolous.

12 First, Denham's request for 385 million dollars in damages is absurd and cannot be  
13 grounded in fact.

14 Second, Denham's Complaint lacks authority for suit against the multiple County and  
15 City employees. Denham brings suit under the Federal Tort Claims Act which allows certain  
16 federal investigative or law enforcement officers to be sued for specific intentional torts, but does  
17 not cover the county and city actors. Denham must assert a basis for his claims against the  
18 multiple county and city Defendants.

19 Third, many of Denham's claims are barred at the outset because Denham's conviction  
20 has not been overturned. *Harvey v. Waldron*, 210 F.3d 1008, 1015 (9th Cir.2000) (where an  
21 alleged civil rights violation is based on a Fourth Amendment violation and calls into question  
22 the validity of the conviction, the claim cannot stand until the conviction is overturned); *see also*  
23 *Heck v. Humphrey*, 512 U.S. 477 (1994) (in a *malicious prosecution* claim the prior criminal  
24 proceeding must be was terminated in the Plaintiff's favor); *Cabrera v. City of Huntington Park*,  
159 F.3d 374, 380 (9th Cir.1998) (*false arrest* and *false imprisonment* claims are barred until the  
conviction is invalidated); *Whitaker v. Garcetti*, 486 F.3d 572, 583 (9th Cir. 2007) (*judicial*  
*deception* claims are barred until the conviction is invalidated).

IT IS SO ORDERED.

Ronald B. Lightner

[DKT. #1] - 3